

REMARKS

The Office Action dated April 20, 2007 has been received and carefully noted. The above amendments and the following remarks are submitted as a full and complete response hereto.

By this Amendment, claim 1 has been amended to clearly recite micro-tablets or pellets as a particulate pharmaceutical material in the capsule body and that the plurality of hollow nozzles each have a plurality of seats on a lateral surface thereof.

Claims 2 and 4 have been amended to be consistent with the amendments to claim 1. No new matter has been added. Claims 1 - 4 are pending and respectfully submitted for consideration.

Rejections Under 35 U.S.C. § 103

Claims 1-4 are rejected under 35 USC § 103(a) as being unpatentable over the disclosure of Johnston et al. (U.S. Patent No. 6,357,490 "Johnston"). The Applicants traverse the rejection and respectfully submit that claims 1-4 recite subject matter that is neither disclosed nor suggested by Johnston.

The Office Action asserts that Johnston discloses a capsule filling machine with a plurality of reciprocating doser means 78 mounted at regular intervals on a rotating carousel 62, and that the doser means are operative between a first position in which the doser picks up particulate matter and a second position in which the doser transfers the particulate matter into capsules. See page 2, lines 13-17 of the Office Action.

Johnston is directed to an apparatus for filling containers with a powder material. In this regard, Johnston discloses a *powder hopper* 19. See at least the Abstract and column 4, lines 61-63 of Johnston. Johnston, however, does not disclose or suggest the claimed capsule filling machine for the production of hard

gelatin capsules of the type with a capsule lid and a capsule body containing micro-tablets or pellets, as recited in claim 1.

The Applicants respectfully submit that the powder material disclosed in Johnston is not comparable to the claimed micro-tablet and pellets, at least because micro-tablets and pellets have dimensions which clearly distinguish them from the granulate form of a powder material. In particular, micro-tablets and pellets have larger and precise dimensions that make them unsuitable for being picked up and dosed by means of an apparatus for dosing powder, as disclosed in Johnston. The Applicants respectfully submit that existing devices for dosing powder are designed to pick up, by suction, a granulate powder material but do not generate sufficient force to pick up micro-tablets or pellets due to their larger dimensions. As such, air is formed between the micro-tablets, which prevents a correct suction holding action for the micro-tablets. Therefore, there is no reasonable expectation of success that the apparatus of Johnston designed to dose granulate powder material would be able to precisely dose the micro-tablets and pellets recited in claim 1. See MPEP § 2143 which states that to establish a *prima facie* case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference must teach or suggest all the claim limitations. In this case, the Applicants respectfully submit that there is no reasonable expectation that the device in Johnston would dose a given and constant number of micro-tablets or pellets for releasing into each capsule. As such, the apparatus and dosing means disclosed in Johnston is not

comparable to the capsule filling machine for dosing the micro-tablets and pellets, as recited in claim 1.

The Applicants further submit that Johnston does not teach or suggest a modification of its disclosed container filling apparatus for dosing micro-tablets and pellets.

Moreover, Johnston fails to teach or suggest at least the feature of a hollow nozzle having a plurality of seats on a lateral surface thereof for picking up and holding the micro-tablets or pellets, and moving between a pick-up position and a release position and communicating with a pressurized pneumatic means, as claimed in amended claim 1. In contrast, Johnston discloses a hopper 19 which is fixed in a centered position with respect to the dosing wheel 15. Therefore, the hopper 19 in Johnston is not movable between the two claimed positions. The Applicants respectfully submit that there is Johnston fails to disclose any element that is arguably comparable to the claimed hollow nozzle.

In addition, the hopper 19 of Johnston releases a dose of powder material by gravity and/or by suction operated under the release hole of the nozzle. Thus, the hopper 19 in Johnston does not communicate with a pressurized pneumatic means. Further, in contrast, to claim 1, the suction in Johnston is generated for releasing the dose from the hopper, not for holding the dose on the nozzle. In view of the above, the Applicants respectfully request that the rejection under 35 U.S.C. §103 be withdrawn.

To establish a *prima facie* case of obviousness, each and every feature of a rejected claim must be taught or suggested by the applied art of record. See M.P.E.P. § 2143.03.

In view of the above, the Applicants respectfully submit that Johnston fails to support a *prima facie* case of obviousness for purposes of a rejection of claim 1 under 35 U.S.C. § 103. Accordingly, claim 1 is not rendered obvious in view of Johnston and should be deemed allowable.

Conclusion

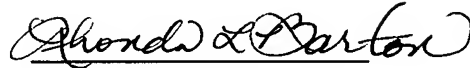
The Applicants respectfully submit that claim 1 is allowable. Claims 2-4 depend from claim 1. The Applicants further submit that each of these claims incorporate the patentable aspects thereof, and are therefore allowable for at least the same reasons as discussed above. Accordingly, the Applicants respectfully request withdrawal of the rejections, allowance of claims 1-4 and the prompt issuance of a Notice of Allowability.

Should the Examiner believe anything further is desirable in order to place this application in better condition for allowance, the Examiner is requested to contact the undersigned at the telephone number listed below.

In the event this paper is not considered to be timely filed, the Applicants respectfully petition for an appropriate extension of time. Any fees for such an extension, together with any additional fees that may be due with respect to this

paper, may be charged to counsel's Deposit Account No. 01-2300, **referencing Attorney Dkt. No. 023349-00301.**

Respectfully submitted,

A handwritten signature in cursive script, reading "Rhonda L. Barton".

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